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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN JOSE DIVISION**

15 RICK WOODS, et al.,

16 Plaintiffs,

17 v.

18 GOOGLE LLC,

19 Defendant.

20 Case No. 5:11-cv-1263-EJD (VKD)

21 **PLAINTIFF RENE CABRERA'S**
22 **OPPOSITION TO PLAINTIFF**
23 **RICK WOODS' MOTION FOR LEAVE TO**
24 **FILE MOTION FOR RECONSIDERATION**
25 **OF ORDER APPOINTING INTERIM**
26 **CLASS COUNSEL**

1 Plaintiff Rene Cabrera (“Cabrera”) respectfully submits this opposition to Plaintiff Rick
 2 Woods’ (“Woods”) Motion for Leave to File Motion for Reconsideration of Order Appointing
 3 Interim Class Counsel (Dkt. 491) (the “Motion”).

4 **I. ARGUMENT**

5 The foundation of Woods’ Motion is that “the dismissal of Cabrera’s claims” constitutes a
 6 “new material fact” that warrants substituting new interim class counsel. Motion at 6. As Woods is
 7 aware, however, the Court has granted Cabrera leave to file a motion for the court to reconsider its
 8 order dismissing his claims. *See* N.D. Cal. L. Civ. R. 7-9(b)(2); *see also* Fed. R. Civ. P. 54(b).
 9 Cabrera’s motion (Dkt. 495-2) sets forth meritorious grounds for the Court to reconsider its
 10 decision. Should the Court ultimately grant the relief that Cabrera seeks, there will no longer be
 11 any justification for Woods’ motion. As a result, until Cabrera’s motion is fully adjudicated, it is
 12 premature to consider Woods’ Motion.

13 This is particularly true because putting Woods’ Motion on hold will allow Cabrera the
 14 opportunity to revive his claims—which would in turn allow Interim Class Counsel to prosecute
 15 this eight-year-old action to its conclusion. There is no dispute here that having current Interim
 16 Class Counsel remain in the case would be the best possible outcome for the Class. In fact, Woods
 17 readily admits that it is in “the overall best interests of the absent class members to allow Cabrera to
 18 move ahead as putative class representative” because Interim Class Counsel has “litigated the case
 19 from its inception.” Motion at 7.

20 To be sure, over the course of eight years of hard-fought litigation, Interim Class Counsel
 21 has amassed a wealth of institutional knowledge that cannot be replicated. To that end, Interim
 22 Class Counsel has spent over **15,000** hours prosecuting this case, which efforts include
 23 investigating the claims from inception, preparing the complaint, and reviewing the nearly one
 24 million pages of discovery produced by Google. Interim Class Counsel has also prepared for and
 25 taken the depositions of 28 fact and expert witnesses. Further, Interim Class Counsel, in
 26 conjunction with Plaintiffs’ experts and consultants, has meticulously analyzed Google’s click data
 27 sample that includes data for over 12,000 advertisers and 408 million AdWords clicks. As a result,

1 Interim Class Counsel has developed an intensive and sophisticated understanding of the complex
 2 record in this case.

3 Interim Class Counsel has also worked diligently to develop expert testimony to support the
 4 Class' allegations, including retaining, consulting with, and submitting expert reports from two
 5 merits experts and one damages expert. Further, Interim Class Counsel has defended four
 6 depositions of Plaintiffs' experts and has prepared for and taken four depositions of Google's
 7 experts. As a result of the testimony procured through these efforts, Interim Class Counsel has also
 8 filed a well-grounded motion to strike the declaration of one of Google's experts, which was, until
 9 recently, scheduled to be heard in conjunction with Cabrera's motion for class certification.

10 Moreover, Interim Class Counsel has a thorough understanding of the particular legal claims
 11 and defenses at issue here. Indeed, Interim Class Counsel has filed at least 65 separate motions in
 12 this case and has opposed at least 15 motions. In addition to fully briefing numerous discovery
 13 motions, a motion for class certification, and *Daubert* motions, Interim Class Counsel has
 14 successfully opposed three dispositive motions—two motions to dismiss and a motion for summary
 15 judgment.

16 All told, Interim Class Counsel has devoted years of hard and challenging work with the
 17 goal of advancing the claims in this Action for the benefit of Plaintiffs and the Class. Cabrera
 18 strongly believes—and Woods concedes—that the Class would be harmed if the institutional
 19 knowledge that has been painstakingly developed by Interim Class Counsel was lost.

20 Finally, if the Court hears Cabrera's motion for reconsideration now and finds that he has
 21 standing to move forward, any delay in bringing this action to its conclusion will be minimized.
 22 Cabrera's motion for class certification is fully briefed and ready to be heard. He is represented by
 23 counsel who are fully immersed in the complex facts and legal issues in this Action, and stands
 24 ready and able to promptly brief summary judgment and prosecute this case to trial. On the other
 25 hand, as Woods *concedes*, “to engage new counsel almost certainly would[] require[] a request to
 26 extend scheduling deadlines even further to allow new counsel to get up to speed.” Motion at 7.

1 For all of these reasons, Cabrera respectfully submits that the Court should deny Woods'
2 Motion as premature.

3 **II. CONCLUSION**

4 Woods concedes that it would be in the best interests of the Class for Interim Class
5 Counsel—who have been engaged in this Action for over eight years—to litigate it to conclusion.
6 Before the Court considers substituting new counsel to represent the Class, therefore, Cabrera
7 should be given an opportunity to be heard.

8 Dated: March 8, 2019

9 Respectfully submitted,

10 /s/ Matthew L. Mustokoff

Matthew L. Mustokoff

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37 Rene Cabrera*

CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 8, 2019.

/s/ Matthew L. Mustokoff
Matthew L. Mustokoff